

Serious injury means:

(1) Permanent loss or substantial impairment of one of the senses (sight, hearing, taste, smell, tactile sensation);

(2) Permanent loss or substantial impairment of the function of a bodily member, organ, or mental faculty, including the loss of all or part of an arm, leg, foot, hand or other body part; or,

(3) Permanent paralysis or substantial impairment that causes loss of movement or mobility of an arm, leg, foot, hand or other body part.

Solicitor of Labor means the Solicitor, U.S. Department of Labor, and includes attorneys designated by the Solicitor to perform functions of the Solicitor under this part and part 780 of this chapter.

Willful violations under this section has several components. An employer's violation of section 12 or section 13(c) of the Act relating to child labor or any regulation issued pursuant to such sections, shall be deemed to be *willful* for purposes of this section where the employer knew that its conduct was prohibited by the Act or showed reckless disregard for the requirements of the Act. All of the facts and circumstances surrounding the violation shall be taken into account in determining whether a violation was willful. In addition, for purposes of this section, an employer's conduct shall be deemed knowing, among other situations, if the employer received advice from a responsible official of the Wage and Hour Division to the effect that the conduct in question is not lawful. For purposes of this section, an employer's conduct shall be deemed to be in reckless disregard of the requirements of the Act, among other situations, if the employer should have inquired further into whether its conduct was in compliance with the Act, and failed to make adequate further inquiry.

[75 FR 28461, May 20, 2010]

§ 579.3 Violations for which child labor civil money penalties may be assessed.

(a) *What constitutes the violation.* Each of the following constitutes a violation of the Act and/or the Secretary's regu-

lations for which a penalty as provided by section 16(e) of the Act and this part may be imposed, unless employment of the minor or minors referred to is shown to come within a specific exemption or exception described in paragraph (c) of this section:

(1) Each shipment or delivery for shipment in commerce by a producer, manufacturer, or dealer of any goods produced in an establishment situated in the United States in or about which, within thirty days prior to the removal of such goods therefrom, there has been employed any minor as described in paragraph (b) of this section;

(2) Each employment by an employer of any minor as described in paragraph (b) of this section, for any period in commerce or in the production of goods for commerce or in any enterprise engaged in commerce or in the production of goods for commerce;

(3)–(4) [Reserved]

(5) The failure by an employer employing any minor for whom records must be kept under any provision of part 516 of this title to maintain and preserve, as required by such provision, such records concerning the date of the minor's birth and concerning the proof of the minor's age as specified therein; and

(6) The failure by an employer employing any minor subject to any provision of 29 CFR part 570, to take or cause to be taken such action as is necessary to assure compliance with all requirements of such provision which, by the regulations in such part, are made conditions for lawful employment of such minor.

(b) *Minors whose employment may result in violation.* The violations described in paragraph (a) may result from employment of any of the following minors as described:

(1) Any minor under the age of 18 years in any occupation (other than in agriculture) in which employment, as set forth in subpart E of part 570 of this chapter, has been found and declared by the Secretary to be particularly hazardous for or detrimental to the health or well-being of minors below such age;

(2) Any minor under the age of 16 years:

(i) In agriculture during school hours for the school district where such minor is living while so employed; or

(ii) In agriculture in any occupation found and declared by the Secretary as set forth in subpart E-1 of part 570 of this chapter, to be particularly hazardous for the employment of minors below such age; or

(iii) In any manufacturing or mining occupation; or

(iv) In any other occupation other than in agriculture unless it is established that such minor is at least 14 years of age and the employment of such minor in such occupation is specifically permitted by and in accord with regulations of the Secretary as set forth in subpart C of part 570 of this chapter;

(3) Any minor under the age of 14 years:

(i) In any occupation other than in agriculture; or

(ii) In agriculture, outside of school hours for the school district where such minor is living while so employed, unless it is established either:

(A) That such minor is not less than 12 years of age *and* either (1) that such employment is with the written consent of a parent or person standing in place of a parent of such minor, or (2) that such employment is on the same farm where such parent or person is also employed; or

(B) That such minor, if less than 12 years of age, is employed as described in paragraph (b)(4)(i) or (b)(4)(ii) of this section; and

(4) Any minor under the age of 12 years, unless it is established that such minor is employed in agriculture outside of school hours for the school district where such minor is living while so employed, and:

(i) Is employed by a parent or by a person standing in place of a parent of such minor, on a farm owned or operated by such parent or person; or

(ii) Is employed with the written consent of a parent or person standing in place of a parent of such minor, on a farm where, because of the provisions of section 13(a)(6) of the Act, none of the employees are required to be paid at the wage rate prescribed by section 6(a)(5) of the Act.

(c) *Exemptions and exceptions.* Conduct which otherwise might constitute a violation of the Act as described in paragraphs (a) and (b) of this section may be shown to be not violative of the child labor provisions by evidence that a specific exemption or exception provided in the Act makes such conduct permissible. Thus, the Act provides:

(1) That none of the child labor provisions of section 12 shall apply to: (i) Any child employed as an actor or performer in motion pictures or theatrical productions, or in radio or television productions; (ii) any employee engaged in the delivery of newspapers to the consumer; (iii) any homemaker engaged in the making of wreaths composed principally of natural holly, pine, cedar, or other evergreens (including the harvesting of the evergreens or other forest products used in making such wreaths); or (iv) any employee whose services during the workweek are performed in a workplace within a foreign country or within territory under the jurisdiction of the United States other than the States, territories, and possessions listed in section 13(f) of the Act (see Act, sections 13(c)(3), 13(d), 13(f));

(2) That, with respect to the violations described in paragraph (a)(1) of this section, any such shipment or delivery for shipment of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer, manufacturer, or dealer that the goods were produced in compliance with the requirements of section 12 of the Act, and who acquired such goods for value without notice of any such violation, shall not be deemed prohibited (see Act, section 12(a) and 29 CFR part 789);

(3) That, with respect to violations described in paragraph (a)(2) of this section resulting from employment of minors as described in paragraph (b)(2)(iv), a parent or person standing in place of a parent may lawfully employ his or her own child or a child in his or her custody under the age of 16 years in an occupation *other than*: (i) Manufacturing or (ii) mining or (iii) an occupation found and declared by the Secretary of Labor to be particularly hazardous for the employment of children between the ages of 16 and 18 years or

detrimental to their health or well-being, and an employer may lawfully employ a young worker between 14 and 16 years of age in an occupation permitted and under conditions prescribed by 29 CFR part 570, subpart C;

(4) That, with respect to violations described in paragraph (a)(2) of this section resulting from employment of minors in agriculture as described in paragraph (b)(2)(iii), a parent or person standing in place of a parent may lawfully employ on a farm owned or operated by such parent or person, his or her own child or a child in his or her custody under the age of 16 years in an occupation in agriculture found and declared by the Secretary of Labor to be particularly hazardous for the employment of children below such age;

(5) That, with respect to violations described in paragraph (a)(2) of this section resulting from employment of minors in agriculture as described in paragraph (b)(3)(ii), employment of minors 12 or 13 years of age is lawful under the conditions prescribed in paragraph (b)(3)(ii)(A) of this section and employment of minors under 12 years of age is lawful under the conditions prescribed in paragraph (b)(3)(ii)(B) of this section; and

(6) That, with respect to violations described in paragraph (a)(2) of this section resulting from employment of minors in agriculture as described in paragraph (b)(4), employment of minors under 12 years of age is lawful under the conditions prescribed in paragraph (b)(4)(i) or (ii) of this section.

[40 FR 25792, June 18, 1975, as amended at 41 FR 26836, June 29, 1976; 69 FR 75405, Dec. 16, 2004]

§ 579.4 [Reserved]

§ 579.5 Determining the amount of the penalty and assessing the penalty.

(a) The administrative determination of the amount of the civil penalty for each employee who was the subject of a violation of section 12 or section 13(c) of the Act relating to child labor or of any regulation under those sections will be based on the available evidence of the violation or violations and will take into consideration the size of the business of the person charged and the

gravity of the violations as provided in paragraphs (b) through (d) of this section. The provisions of section 16(e)(1)(A)(ii) of the Fair Labor Standards Act, regarding the assessment of civil penalties not to exceed \$50,000 with regard to each violation that causes the death or serious injury of any employee under the age of 18 years, apply only to those violations that occur on or after May 21, 2008.

(b) In determining the amount of such penalty there shall be considered the appropriateness of such penalty to the size of the business of the person charged with the violation or violations, taking into account the number of employees employed by that person (and if the employment is in agriculture, the man-days of hired farm labor used in pertinent calendar quarters), dollar volume of sales or business done, amount of capital investment and financial resources, and such other information as may be available relative to the size of the business of such person.

(c) In determining the amount of such penalty there shall be considered the appropriateness of such penalty to the gravity of the violation or violations, taking into account, among other things, any history of prior violations; any evidence of willfulness or failure to take reasonable precautions to avoid violations; the number of minors illegally employed; the age of the minors so employed and records of the required proof of age; the occupations in which the minors were so employed; exposure of such minors to hazards and any resultant injury to such minors; the duration of such illegal employment; and, as appropriate, the hours of the day in which it occurred and whether such employment was during or outside school hours.

(d) Based on all the evidence available, including the investigation history of the person so charged and the degree of willfulness involved in the violation, it shall further be determined, where appropriate,

(1) Whether the evidence shows that the violation is “de minimis” and that the person so charged has given credible assurance of future compliance,